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HOUSE BILL 703

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Nick Tinnin

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE GANG ENFORCEMENT AND PREVENTION ACT; PROVIDING CRIMINAL PENALTIES FOR INDUCING MINORS TO PARTICIPATE IN A PATTERN OF CRIMINAL GANG ACTIVITY; PROVIDING CRIMINAL PENALTIES FOR PARTICIPATING IN A PATTERN OF CRIMINAL GANG ACTIVITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE. -- This act may be cited as the "Gang Enforcement and Prevention Act". "

Section 2. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds and declares that it is

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1 the right of every person to be secure and protected from
2 intimidation and physical harm caused by the criminal
3 activities of violent groups and individuals. The legislature
4 also finds that the citizens of New Mexico are concerned about
5 the increase in criminal activity that can be attributed to
6 criminal gangs. This criminal activity presents a clear and
7 present danger to public safety and is not the type of activity
8 that is protected by the United States constitution or the
9 constitution of New Mexico.

10 B. The purpose of the Gang Enforcement and
11 Prevention Act is not to interfere with constitutionally
12 protected rights of freedom of speech and freedom of
13 association. Rather, the purpose of the Gang Enforcement and
14 Prevention Act is to deter and punish criminal activity engaged
15 in by criminal gangs. "

16 Section 3. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] DEFINITIONS. --As used in the Gang
19 Enforcement and Prevention Act:

20 A. "criminal gang" means an organization,
21 association or group of three or more persons:

22 (1) that has a common name or a common
23 identifying sign or symbol; and

24 (2) whose members engage in a pattern of
25 criminal gang activity; and

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1 B. "pattern of criminal gang activity" means
2 convictions for the commission of two or more of the following
3 criminal offenses; provided that at least one of the
4 convictions occurs within three years of a prior conviction;
5 and provided further that the convictions are obtained against
6 two or more members of the same criminal gang:

7 (1) murder in the first degree, as provided in
8 Subsection A of Section 30-2-1 NMSA 1978;

9 (2) murder in the second degree, as provided
10 in Subsection B of Section 30-2-1 NMSA 1978;

11 (3) voluntary manslaughter, as provided in
12 Subsection A of Section 30-2-3 NMSA 1978;

13 (4) aggravated assault, as provided in Section
14 30-3-2 NMSA 1978;

15 (5) assault with intent to commit a violent
16 felony, as provided in Section 30-3-3 NMSA 1978;

17 (6) aggravated battery, as provided in
18 Subsection C of Section 30-3-5 NMSA 1978;

19 (7) shooting at a dwelling or occupied
20 building or shooting at or from a motor vehicle, as provided in
21 Section 30-3-8 NMSA 1978;

22 (8) kidnapping, as provided in Section 30-4-1
23 NMSA 1978;

24 (9) dangerous use of explosives, as provided
25 in Section 30-7-5 NMSA 1978;

 (10) criminal sexual penetration, as provided
in Section 30-9-11 NMSA 1978;

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1 (11) criminal damage to property, as provided
2 in Section 30-15-1 NMSA 1978, when the damage to the property
3 amounts to more than one thousand dollars (\$1,000);

4 (12) graffiti to real or personal property, as
5 provided in Subsection C of Section 30-15-1.1 NMSA 1978;

6 (13) larceny, as provided in Section 30-16-1
7 NMSA 1978, when the value of the property stolen is more than
8 two hundred fifty dollars (\$250);

9 (14) robbery, as provided in Section 30-16-2
10 NMSA 1978;

11 (15) burglary, as provided in Subsection A of
12 Section 30-16-3 NMSA 1978;

13 (16) aggravated burglary, as provided in
14 Section 30-16-4 NMSA 1978;

15 (17) arson, as provided in Section 30-17-5
16 NMSA 1978;

17 (18) aggravated arson, as provided in Section
18 30-17-6 NMSA 1978;

19 (19) bringing contraband into a prison or
20 bringing contraband into a jail, as provided in Section
21 30-22-14 NMSA 1978;

22 (20) possession of a deadly weapon or an
23 explosive by a prisoner, as provided in Section 30-22-16 NMSA
24 1978;

25 (21) assault by a prisoner, as provided in

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1 Section 30-22-17 NMSA 1978;

2 (22) aggravated assault upon a peace officer,
3 as provided in Section 30-22-22 NMSA 1978;

4 (23) aggravated battery upon a peace officer,
5 as provided in Subsection C of Section 30-22-25 NMSA 1978;

6 (24) bribery or intimidation of a witness or
7 retaliation against a witness, as provided in Section 30-24-3
8 NMSA 1978;

9 (25) any felony violation of the Controlled
10 Substances Act;

11 (26) attempt to commit one of the first,
12 second or third degree felonies set forth in Paragraphs (1)
13 through (25) of this subsection, as provided in Section 30-28-1
14 NMSA 1978;

15 (27) conspiracy to commit one of the felonies
16 set forth in Paragraphs (1) through (25) of this subsection, as
17 provided in Section 30-28-2 NMSA 1978; or

18 (28) criminal solicitation of another person
19 to commit one of the felonies set forth in Paragraphs (1)
20 through (25) of this subsection, as provided in Section 30-28-3
21 NMSA 1978. "

22 Section 4. A new section of the Criminal Code is enacted
23 to read:

24 "[NEW MATERIAL] INDUCEMENT OF MINORS TO PARTICIPATE IN A
25 PATTERN OF CRIMINAL GANG ACTIVITY--PENALTY.--A person who uses

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1 threats, intimidation or persuasion to induce another person
2 less than eighteen years of age to participate in a pattern of
3 criminal gang activity is guilty of a third degree felony. "

4 Section 5. A new section of the Criminal Code is enacted
5 to read:

6 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG--
7 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED. --

8 A. When a felony, as described in Paragraphs (1)
9 through (28) of Subsection B of Section 3 of the Gang
10 Enforcement and Prevention Act, is committed with the intent to
11 aid and abet a criminal gang with a pattern of criminal gang
12 activity, the basic sentence of imprisonment prescribed for the
13 offense in Section 31-18-15 NMSA 1978 shall be increased by two
14 years. The sentence imposed pursuant to this subsection shall
15 be the first two years served and shall not be suspended,
16 deferred or taken under advisement; provided that when the
17 offender is a serious youthful offender or a youthful offender,
18 the sentence imposed pursuant to this subsection may be
19 increased by two years.

20 B. When a second or subsequent felony, as described
21 in Paragraphs (1) through (28) of Subsection B of Section 3 of
22 the Gang Enforcement and Prevention Act, is committed with the
23 intent to aid and abet a criminal gang with a pattern of
24 criminal gang activity, the basic sentence of imprisonment
25 prescribed for the offense in Section 31-18-15 NMSA 1978 shall

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1 be increased by four years. The sentence imposed pursuant to
2 this subsection shall be the first four years served and shall
3 not be suspended, deferred or taken under advisement; provided
4 that when the offender is a serious youthful offender or a
5 youthful offender, the sentence imposed pursuant to this
6 subsection may be increased by four years.

7 C. If the case is tried before a jury and if a prima
8 facie case is established showing that the felony was committed
9 with the intent to aid and abet a criminal gang with a pattern
10 of criminal gang activity, the court shall submit the issue to
11 the jury by special interrogatory.

12 D. If the case is tried by the court and if a prima
13 facie case is established showing that the felony was committed
14 with the intent to aid and abet a criminal gang with a pattern
15 of criminal gang activity, the court shall decide the issue and
16 shall make a separate finding of fact thereon."

17 Section 6. A new section of the Criminal Code is enacted
18 to read:

19 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG-- DUTY OF
20 DISTRICT ATTORNEY TO PROSECUTE. --If at any time, either after
21 sentence or conviction, it appears that a person convicted of a
22 felony described in Paragraphs (1) through (28) of Subsection B
23 of Section 3 of the Gang Enforcement and Prevention Act
24 committed the felony while engaging in a pattern of criminal
25 gang activity, it is the duty of the district attorney of the

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1 district in which the present conviction was obtained to file an
2 information charging that person pursuant to the provisions of
3 the Gang Enforcement and Prevention Act. "

4 Section 7. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2003.

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